BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the matter of:	)	Case No. 2001020286
	)	
DAVID P.	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
HARBOR REGIONAL CENTER,	)	
	)	
Service Agency.	)	
	)	

DECISION

Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, heard this matter at Torrance, California, on May 17, 2001.[1] Claimant David P. was represented by his parents, Mr. Jeff P. and Ms. Irene P.[2] Harbor Regional Center, the Respondent, was represented by Ms. Susan Laird, M.S., Program Manager.

Evidence was received, the matter argued, and the case submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

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[1] As Claimant's family had requested hearings on other claims made for this child, as well as for his brother, the matters were consolidated for hearing, although separate decisions will be issued in each case. As a result, there was one transcript made, and one set of exhibits presented by Claimant and his brother on the one hand, and the regional center on the other. Further, it should be noted that in order to facilitate a consolidated hearing, the matters were continued on more than one occasion at Claimant's request.

[2] Claimant's surname is omitted throughout this decision to protect his privacy, as well as his family's.

ISSUE PRESENTED

Is Claimant, who is otherwise entitled to services in light of his status as an autistic child, entitled to continued "aid paid pending" services when his school district has been ordered to provide some or all of those services on an interim basis?

FACTUAL FINDINGS

1. Claimant is three and one-half years old, having been born December 14, 1997. He has been receiving "Early Start" services from Harbor Regional Center (sometimes "HRC" or the Service Agency) since approximately July 1999. Services had been provided pursuant to the California Early Intervention Services Act, Government Code section 95000, *et. seq*. His eligibility for services was initially based on an assessment that he suffered from global developmental delay. Thereafter, he was diagnosed with autism, and that diagnosis is undisputed. Claimant lives with his parents and a younger brother in the southern part of Los Angeles County, and within the Respondent's service area. Claimant's brother is also autistic.

2. It was not disputed that Petitioner has been, generally speaking, entitled to services from HRC,[3] although there is dispute as to just what services must be provided by HRC and what must be provided by Claimant's school district. There is no claim that Claimant did not invoke the fair hearing process in a timely manner, and jurisdiction existed to conduct the hearing and to issue this decision.

3. Under the auspices of the Early Intervention Program David has been receiving various services that have provided him, and indirectly his family, with significant benefits. Heretofore he has received Discrete Trial Training ("DTT")from California Psychcare, a local firm that is an HRC vendor. As of the last day of his third year, David was to receive twenty one and one-half hours of such training per week, and the Center also paid for supervision. David was enrolled in a preschool program, and was receiving occupational therapy, speech therapy, and music therapy. Some transportation services were provided, as well as an aide at his preschool.[4]

4. Efforts were made to begin the "transition" period, whereby Claimant's school district would begin to provide services to him. However, Claimant's parents and the school district, Palos Verdes Peninsula Unified School District, could not agree on the entire package of services. The parents therefore began due process proceedings with the school district. As of January 2001, HRC was continuing to provide the aforementioned services to

[3] See e.g., Claimant's Exhibit "B", the service note from September 11, 2000.
[4] Claimant's family also receives respite care services.

David as "aid paid pending" until a resolution of the proceedings between the family and the school district could be reached. (See Claimant's Exhibit "D".)

5. HRC agreed to extend funding for Claimant's services for an additional fifty days, effective December 18, 2000. Notice went to his parents December 15, 2000. (See HRC Exhibit "I".) The Service Agency offered this funding to provide Claimant a chance to complete his due process proceeding.

6. (A) In early February 2001, Claimant requested a "stay put" order from the California Special Education Hearing Office, which has jurisdiction over the due process proceeding between Claimant and the school district. By that request Claimant sought an order requiring the school district to provide the services that HRC had provided previously. (HRC's Exhibit "SA-X".)

(B) Meanwhile, on February 9, 2001, HRC informed Claimant's family that the fifty days of services was gone, and that services would be discontinued effective February 11 of that year. (Claimant's Exhibit "D") That same day, Claimant requested a fair hearing. (Claimant's Exhibit "E".)

7. On February 26, 2001, Hee C. Kim, the hearing officer for the California Special Education Hearing Office granted the request, in part. The school district was ordered to provide eighteen hours of typical preschool, ten hours of one-to-one aide at the school, and twenty-one and one-half hours of "direct individual intensive early autism treatment in the home, along with six hours supervision. The school district was also ordered to provide two hours per week each of speech therapy, occupational therapy and music therapy, as well as transportation. The order made clear that these services were to be provided during the pendancy of the due process hearing; this was therefore a temporary order. (See HRC's Exhibit "SA-X".)

8. On hearing the news, the Service Agency concluded that the school district would now indeed take over the task of providing these important services to Claimant. HRC staff therefore took steps to disengage the vendors who had been providing the services. On March 27, 2001, HRC wrote to the parents, stating that HRC understood the school district was ready to provide the services. HRC stated it would cease providing the services April 10, although it would continue to provide respite care. (See HRC's Exhibit "K.")

9. Despite the "stay put" order, the school has not complied with its duties as defined by the Hearing Officer in that order. It provided some of the services for a short period, and then there was a break in service during late April and early May. At one point, there was no transportation for David, as there was supposed to be. Meanwhile, the family and the school district have been at odds, mainly over the preschool placement. From the family's perspective, the school district is not offering an adequate preschool placement and the

family wants him to remain in his current preschool, even though it is much further from their home than the placement offered by the District.[5]

10. The Service Agency was not aware until shortly before the hearing of this latest breakdown between the school district and Claimant. HRC witnesses attested that they had been informed by the school district that it was going to provide the services ordered by the Hearing Officer. It is clear that there has been at least a miscommunication in this regard, but there is no evidence that HRC is at fault, and not otherwise acting in good faith in this matter.

11. Experience teaches that breaks in services do not optimize an autistic child's acquisition of suitable behaviors, and it can lead to regression. Indeed, the transition process is designed to avoid breaks in service. It must be found that HRC has made good faith efforts to prevent that, as evidenced from its agreement to provide services after December 2000, and its willingness to allow double payment in April 2001, until the transition was complete. (See HRC's Exhibit "K".)

12. The Claimant at this point is requesting HRC to continue to provide the preschool, shadow aide, and transportation. HRC asserts that it may not supplant the budget of generic providers such as a school district when that agency is obligated to provide the requested services. Meanwhile, Claimant is threatened with the loss of certain services that are necessary for his development, *i.e.*, placement in an appropriate "typical" preschool environment, and a one-to-one aide. In this regard it should be noted that Dr. Freeman recommended that he remain in preschool, and preferably a typical preschool. (Claimant's Exhibit "A".)

LEGAL CONCLUSIONS

1. Claimant was eligible for services pursuant to the California Early Intervention Service Act, Government Code section 95000 et seq., and Title 17, California Code of Regulations ("CCR"), sections 52020 and 52022(a), based on Factual Findings 1, 2 and 3.

2. Jurisdiction exists to conduct the hearing in this matter, and to render a decision thereon, pursuant to CCR sections 52172 and 52174, based on Legal Conclusion 1 and Factual Finding number 2. Alternatively, jurisdiction exists to proceed under the Lanterman

[5] Although Claimant's parents and HRC have their differences, they agree that David's current preschool placement is far superior to that offered by the District. This was the testimony of the service coordinator, and it is the position of staff professionals who have visited the current school. Thus the parent's dispute with the district over placement is not without merit, and is asserted in good faith.

Act, Welfare and Institutions Code section 4710, et seq., based on Factual Finding 1, and Legal Conclusion 3, below.

3. Claimant is entitled to services under the provisions of the Lanterman Act, as he is three years old and autistic, a condition qualifying him for services. This Conclusion is based upon Welfare and Institutions Code sections 4512(a), 4646, and 4646.5, and Factual Finding 1.

4. Under IDEA and Early Start, the Harbor Regional Center must maintain Petitioner's early start services pending transition to service by an education district, and while due process proceedings are pending. This conclusion is based upon 34 Code of Federal Regulations ("CFR") section 303.425 and section 639(b) of the United States Code (title 20). Therefore, during the pendancy of the Petitioner's due process proceedings with the school district, Respondent is normally required to maintain the services previously provided.

5. Under the Lanterman Act, Welfare and Institutions Code section 4715, a consumer is entitled to "aid paid pending" if he or she files a timely request for hearing, that is, within ten days of notice that a service will be discontinued. That occurred in this case, as set forth in Factual Finding 6(B). Therefore, Claimant is entitled to continued services at least during the life of this proceeding.

6. Independent of the foregoing, the Service Agency as payer of last resort must provide those services necessary and appropriate to the child, even if some or all of those services should be provided by a "generic" resource such as a school district. This is true whether this case is examined under the Lanterman Act, or the Early Intervention Services Act. (See Welfare and Institutions Code, sections 4659, 4644; see Government Code, section 95014(b)(1). See also, Title 17, CCR, section 52109(b).) Thus, based on Factual Finding 9, which establish nonfeasance by the school district, and Factual Findings 11 and 12, which establish that continued service is necessary, the Service Agency is required to provide the services currently being provided, until the school district's responsibilities have been fulfilled.

7. The Harbor Regional Center may seek reimbursement from Petitioner's school district pursuant to Welfare and Institutions Code section 4659. Further, HRC may provide the family advocacy services, to assist them in obtaining compliance with the stay put order.

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ORDER

Harbor Regional Center shall continue to provide services to Claimant David P. in the form of continued placement in his current preschool, transportation services three days per week, and ten hours of time from a one-to-one aide at his preschool. These services shall be provided so long as Palos Verdes Peninsula School District fails to do so.

SO FAR AS THIS DECISION IS BASED ON THE LANTERMAN ACT, THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.

May 29, 2001

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Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings